ROWE ♦ ALLEN ♦ MULLEN LLP
Martin Mullen (SBN 137974)
James S. Brasher (SBN 171139)
4275 Executive Square, 11th Floor
La Jolla, California 92037
Telephone: (858) 404-9800
Facsimile: (858) 404-9833

FILED
2010 FEB 12 PM 2:32
CLERK
U.S. BANKRUPTCY CT.
SO DIST. OF CALIF.

Attorneys for Debtors/Defendants
MICHAEL MCKENZIE &
DIANE VERONICA MCKENZIE

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

In re

MICHAEL MCKENZIE and DIANE VERONICA MCKENZIE,

Debtors.

LUCY PERPULY, an individual; JORGE PERPULY, an individual,

Plaintiffs,

v.

MICHAEL MCKENZIE, an individual and d.b.a. United Realty, Inc.; DIANE MCKENZIE, an individual,

Defendants.

Bankruptcy Case No. 09-15245-LA7

Chapter 7

Adversary Case No. 09-90583

DEBTORS' ANSWER TO COMPLAINT TO DETERMINE NON-DISCHARGEABILITY OF DEBT

Debtors and Defendants Michael McKenzie and Diane McKenzie (collectively "Debtors" or "Defendants"), for themselves and no other parties, answers the Adversary Complaint of plaintiffs Lucy Perpuly and Jorge Perpuly (collectively "Plaintiffs") as follows:

1. Answering Paragraph 1, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

///

///

2. Answering Paragraph 2, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

3. Answering Paragraph 3, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

4. Answering Paragraph 4, Defendants admit that the causes of action in the Adversary Complaint were the subject of the prior San Diego Superior Court action. Defendants further admit that said San Diego Superior Court action was stayed pursuant to a stipulation to arbitrate the dispute. Defendants also admit they did not participate in the arbitration because of the bankruptcy filing. Defendants lack sufficient knowledge or information as to the truth of the remaining allegations, on that basis, deny the remaining allegations of said paragraph.

5. Answering Paragraph 5, Defendants admit they filed for bankruptcy after the San Diego Superior Court action was stayed and after the arbitration was initiated.

6. Answering Paragraph 6, Defendants admit that the referenced San Diego Superior Court action is presently stayed. The remaining allegations of this paragraph are legal contentions of Plaintiffs, and Defendants lack sufficient knowledge or information regarding those legal contentions, on that basis, deny those allegations/legal contentions.

7. Answering Paragraph 7, Defendants lack sufficient knowledge or information as to the truth of the allegations contained therein and, on that basis, deny the allegations of said paragraph.

8. Answering Paragraph 8, Defendants lack sufficient knowledge or information as to the truth of the allegations contained therein and, on that basis, deny the allegations of said paragraph.

9. Answering Paragraph 9, Defendants admit the allegations of said paragraph.

10. Answering Paragraph 10, Defendants admit the allegations of said paragraph.

11. Answering Paragraph 11, Defendants admit the allegations of said paragraph.

12. Answering Paragraph 12, there are no allegations contained therein.

13. Answering Paragraph 13, Defendants deny the allegations of said paragraph.

14. Answering Paragraph 14, Defendants deny the allegations of said paragraph.

15. Answering Paragraph 15, Defendants admit that Plaintiffs purchased the subject real property. Defendants deny the remaining allegations of said paragraph.

16. Answering Paragraph 16, Defendants admit the allegations of said paragraph.

17. Answering Paragraph 17, Defendants admit the allegations of said paragraph.

18. Answering paragraph 18, Defendants lack sufficient knowledge or information as to the truth of the allegations contained therein and, on that basis, deny the allegations of said paragraph.

19. Answering paragraph 19, Defendants lack sufficient knowledge or information as to the truth of the allegations contained therein and, on that basis, deny the allegations of said paragraph.

20. Answering paragraph 20, Defendants lack sufficient knowledge or information as to the truth of the allegations contained therein and, on that basis, deny the allegations of said paragraph.

21. Answering Paragraph 21, Defendants deny the allegations of said paragraph.

22. Answering Paragraph 22, Defendants deny the allegations of said paragraph.

23. Answering Paragraph 23, Defendants lack sufficient knowledge or information as to the truth of the allegation that Plaintiffs discovered defects in the foundation of the subject real property and, on that basis, deny said allegation. Defendants deny the remaining allegations of said paragraph.

24. Answering Paragraph 24, Defendants admit they signed the Real Estate Transfer Disclosure Statement attached as Exhibit "4." With respect to the remaining allegations of said paragraph, the Real Estate Transfer Disclosure Statement speaks for itself.

25. Answering Paragraph 25, Defendants deny the allegations of said paragraph.

26. Answering Paragraph 26, Defendants admit they signed the Seller's Additional Disclosures form attached as Exhibit "5." Defendants deny that a double homicide had occurred at

///

the subject property at the time they signed the Seller's Additional Disclosure form. With respect to the remaining allegations of said paragraph, the Seller's Additional Disclosure form speaks for itself.

27. Answering Paragraph 27, Defendants lack sufficient knowledge or information as to the truth of the allegation that the foundation of unit 337 was crumbling and, on that basis, deny said allegation. Even if the foundation of unit 337 was crumbling, Defendants deny they knew and/or covered up any such fact. Defendants deny that they replaced all of the flooring in 337 Woodman St., Unit A. With respect to the remaining allegations of said paragraph, the Seller's Additional Disclosure form speaks for itself.

28. Answering Paragraph 28, with respect to the allegations regarding the statements in the Seller's Additional Disclosure form, that form speaks for itself. Defendants admit knowledge of an isolated break-in at one of the units at the subject real property well prior to the sale to Plaintiffs. Defendants deny knowledge of any border patrol raids at the subject real property prior to the sale. Defendants deny knowledge of any illegal activity being conducted in any unit at the subject real property prior to the sale.

29. Answering Paragraph 29, Defendants admit they signed the Supplemental Statutory and Contractual Disclosure form attached as Exhibit "6." Defendants deny that a double homicide had occurred at the subject property at the time they signed the Supplemental Statutory and Contractual Disclosure form. With respect to the remaining allegations of said paragraph, the Supplemental Statutory and Contractual Disclosure form speaks for itself.

30. Answering Paragraph 30, Defendants admit the allegations of said paragraph.

31. Answering Paragraph 31, with respect to the information in the Multiple Listing Service ("MLS") listing regarding the subject real property, the MLS listing speaks for itself.

32. Answering Paragraph 32, Defendants lack sufficient knowledge or information as to the truth of the allegations contained therein and, on that basis, deny the allegations of said paragraph.

///

///

///

33. Answering Paragraph 33, Defendants lack sufficient knowledge or information as to the truth of the allegations regarding the consequences of tearing down units at the subject real property and, on that basis, deny said allegations. Defendants deny the remaining allegations of said paragraph.

34. Answering Paragraph 34, Defendants deny the allegations of said paragraph.

35. Answering Paragraph 35, Defendants deny the allegations of said paragraph.

36. Answering Paragraph 36, Defendants deny the allegations of said paragraph.

37. Answering paragraph 37, Defendants lack sufficient knowledge or information as to the truth of the allegations contained therein and, on that basis, deny the allegations of said paragraph.

38. Answering Paragraph 38, Defendants incorporate by reference their responses to the allegations contained in all previous paragraphs.

39. Answering Paragraph 39, Defendants deny the allegations of said paragraph.

40. Answering Paragraph 40, Defendants deny the allegations of said paragraph.

41. Answering Paragraph 41, Defendants deny the allegations of said paragraph.

42. Answering Paragraph 42, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

43. Answering Paragraph 43, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

44. Answering Paragraph 44, Defendants deny they made any misrepresentations to Plaintiffs. Defendants lack sufficient knowledge or information regarding the remaining allegations of this said paragraph and, on that basis, deny those remaining allegations.

45. Answering paragraph 45, Defendants lack sufficient knowledge or information as to the truth of the allegations contained therein and, on that basis, deny the allegations of said paragraph.

///

46. Answering Paragraph 46, Defendants deny they made any misrepresentations to Plaintiffs. Defendants lack sufficient knowledge or information regarding the remaining allegations of this said paragraph and, on that basis, deny those remaining allegations.

47. Answering Paragraph 47, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

48. Answering Paragraph 48, Defendants incorporate by reference their responses to the allegations contained in all previous paragraphs.

49. Answering Paragraph 49, Defendants deny the allegations of said paragraph.

50. Answering Paragraph 50, Defendants deny the allegations of said paragraph.

51. Answering Paragraph 51, Defendants deny the allegations of said paragraph.

52. Answering Paragraph 52, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

53. Answering Paragraph 53, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

54. Answering Paragraph 54, Defendants deny they made any misrepresentations to Plaintiffs. Defendants lack sufficient knowledge or information regarding the remaining allegations of this said paragraph and, on that basis, deny those remaining allegations.

55. Answering Paragraph 55, Defendants deny they made any misrepresentations to Plaintiffs. Defendants lack sufficient knowledge or information regarding the remaining allegations of this said paragraph and, on that basis, deny those remaining allegations.

56. Answering Paragraph 56, the allegations contained therein are legal assertions, and Defendants lack sufficient knowledge or information regarding the allegations/legal assertions and, on that basis, deny those allegations/legal assertions.

///

///

AS SEPARATE AFFIRMATIVE DEFENSES, DEFENDANTS ALLEGE THE FOLLOWING

FIRST AFFIRMATIVE DEFENSE

57. The Complaint, and each and every cause of action or purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action against Defendants.

SECOND AFFIRMATIVE DEFENSE

58. The Complaint is barred by the applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

59. Plaintiffs and everyone for whom Plaintiffs assert this action have delayed and waited an unreasonable period of time in commencing this action, which has unduly prejudiced Defendants.

FOURTH AFFIRMATIVE DEFENSE

60. By virtue of their own conduct, Plaintiffs and everyone for whom Plaintiffs assert this action are estopped from recovering from Defendants for the claims in this Complaint.

FIFTH AFFIRMATIVE DEFENSE

61. Plaintiffs' purported causes of action are subject to setoff in the amount due and owing by Plaintiffs to Defendants.

SIXTH AFFIRMATIVE DEFENSE

62. Plaintiffs and everyone for whom Plaintiffs assert this action have waived any right to recovery from Defendants for the claims in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

63. The Complaint, in whole or in part, is barred by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

64. Plaintiffs and everyone for whom Plaintiffs assert this action consented to the actions allegedly taken by Defendants, thereby barring Plaintiffs from recovering damages from Defendants.

NINTH AFFIRMATIVE DEFENSE

65. Plaintiffs' claims against Defendants are barred as a result of the discharge Defendants obtained in connection with their bankruptcy proceeding.

TENTH AFFIRMATIVE DEFENSE

66. Plaintiffs are barred from pursuing any remedy against Defendants for any damage which is the subject of the Complaint, because Plaintiffs did not notify Defendants within a reasonable time after Plaintiffs discovered, or reasonably should have discovered, the alleged wrongdoing.

ELEVENTH AFFIRMATIVE DEFENSE

67. Plaintiffs failed to use reasonable care to reduce, minimize and/or mitigate, as much as reasonably possible, the damages if any, brought about by the alleged acts and/or omissions of Defendants, and said failure on the part of Plaintiffs was the direct and proximate cause of any and all damages, if any sustained by Plaintiffs, and Plaintiffs' recovery, if any, against Defendants should be barred or reduced according to law, up to and including the whole thereof.

TWELFTH AFFIRMATIVE DEFENSE

68. The damages, if any, sustained by Plaintiffs were proximately cause or contributed to by the acts and/or omissions of Plaintiffs' agents, servants, representative, advisors and/or counsel, in that said person or persons failed to exercise ordinary or reasonable care and caution with respect to the transaction which is the subject of this lawsuit, and said acts and/or omissions are imputed to Plaintiffs, and Plaintiffs' claims for damages, if any, should therefore be barred or reduced according to law, up to and including the whole thereof.

THIRTEENTH AFFIRMATIVE DEFENSE

69. Without admitting any allegation of the Complaint, some of the acts, actions and activities, as alleged were committed, if at all, by independent, non-affiliated persons who were not acting on behalf of or within the course and scope of any relationship with Defendants during the time referred to in the Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

70. Plaintiffs are entirely, or alternatively, partially, barred from recovery in this action to the extent that they have received consideration from Defendants or from anyone else in satisfaction of any purported claim against Defendants.

///

FIFTEENTH AFFIRMATIVE DEFENSE

71. Defendants have duly performed, satisfied and discharged all duties and obligations they may have owed to Plaintiffs arising out of any agreements, representations, contracts or warranties made by Defendants or on their behalf, and this action is therefore barred by the provisions of California Civil Code section 1473.

SIXTEENTH AFFIRMATIVE DEFENSE

72. Defendants deny that Plaintiffs were damaged as a proximate result of any conduct on the part of Defendants. Defendants affirmatively alleges that Plaintiffs' damages, if any, were proximately caused by the independent conduct of third parties or entities whether or not parties to this action. Plaintiffs' recovery against Defendants, if any, must therefore be reduced to the extent that those damages, if any, were caused by the independent conduct of third parties.

SEVENTEENTH AFFIRMATIVE DEFENSE

73. If Defendants are found responsible in damages to Plaintiffs or some other party or parties, whether as alleged or otherwise, then Defendants are informed and believe and, on that basis, allege that the liability will be predicated upon the active conduct of Plaintiffs, whether by negligence, breach of warranty, strict liability in tort or otherwise, which unlawful conduct proximately caused the alleged incident and that Plaintiffs' action against Defendants is barred by that active and affirmative conduct.

EIGHTEENTH AFFIRMATIVE DEFENSE

74. Defendants are informed and believe and on that basis allege that any and all damages, if any, were the direct and proximate result of the intervening and superseding actions of other parties, either served or un-served, and not Defendants, and that such intervening and superseding actions of other parties, whether or not served, bar recovery herein on behalf of Plaintiffs.

NINETEENTH AFFIRMATIVE DEFENSE

75. Plaintiffs' attempt to secure performance would result in unjust enrichment.

///

///

TWENTIETH AFFIRMATIVE DEFENSE

76. Defendants presently have insufficient knowledge or information upon which to form a belief as to whether they may have additional, as yet unknown, affirmative defenses. Defendants reserve the right to assert additional affirmative defenses in the event discovery indicates it would be appropriate.

WHEREFORE, Defendants pray for judgment against Plaintiffs as follows:

1. That Plaintiffs take nothing by reason of the Complaint on file herein;
2. For costs of suit incurred herein, including reasonable attorneys' fees; and
3. For such other and further relief as the Court deems just and proper.

Dated: February 12, 2010

ROWE ♦ ALLEN ♦ MULLEN LLP

By: ______________________

Martin Mullen
James Brasher
Attorneys for Debtors/Defendants
MICHAEL MCKENZIE and DIANE VERONICA MCKENZIE